IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15585 of 2003

with

SPECIAL CIVIL APPLICATION No 16201 of 2003

Date of Decision: 07-02-2004

UNION OF INDIA

Versus

HASMUKHBHAI P. RAIJADA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Union of India Mrs.Vasavdatta Bhatt, Adv.

For the Employee Mr.P.H.Pathak, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

Heard learned counsel Mrs.Vasvdatta Bhatt on behalf of the petitioner - Union of India in connection with Special Civil Application No.15585 of 2003 and learned counsel Mr.P.H.Pathak for petitioner in cross petition being Special Civil Application No.16201 of 2003 and vis-a-vis on behalf of the respondents in both these

petitions.

Whether reporters of Local Papers may be allowed to see the Judgment?

#. Rule. Service of Rule waived by learned counsels for the other side in both the petitions.

#. With the consent of the learned counsel for the parties, we propose to hear both these petitions finally and dispose of the same [Special Civil Applications Nos.15585/03 & 16201/03] by common order since they are directed against the same judgment dated 14.5.2003 passed by the Central Administrative Tribunal, Ahmedabad Bench (CAT) in Original Application No.360/2000 with M.A.No.118 / 2003, whereby the Tribunal has disallowed to initiate fresh inquiry against the concerned delinquent employee and Original Application is allowed and the order of punishment is quashed and set aside. The Tribunal has further directed to reinstate the concerned employee forthwith but held that the employee concerned shall not be entitled to back wages but the period from the date of dismissal till the date of reinstatement shall, however, be counted towards seniority and increment and in view of disposal of O.A., M.A.No.118 / 2003 for amendment also decided accordingly.

#. The brief facts giving rise to both these petitions are as under :

The Shri H.P.Raijada (delinquent-employee) was working as B-Link Goods Guard at Rajkot. He was appointed in the Railway service on 12th September, 1980. He was booked as Guard in Fast Passenger Train between Rajkot to Okha. Shri H.P.Raijada was served with the chargesheet by the competent authority. The charge against Shri Raijada is that while functioning as Guard on 9th December, 1998, Shri Raijada had acted carelessly, negligently and irregularly. The article of charge is that on 9th December, 1998, 48-Up train was detained for 45 minutes extra for parcel loading due to careless working at Okha Station and the delinquent employee Shri Raijada has failed to give information to the Station Master on duty or the Control. Initially, preliminary inquiry was initiated and thereafter, regular departmental inquiry was held against the concerned employee Shri Raijada. Thereafter, he was dismissed from service on June 7, 2000. Being aggrieved of the dismissal order, Shri Raijada has approached directly to

the Central Administrative Tribunal, Ahmedabad Bench challenging the order of dismissal dated June 7, 2000. Before the Central Administrative Tribunal, Ahmedabad, Shri H.P.Raijada had challenged issuance of chargesheet, the inquiry proceedings and the ultimate order of penalty by the competent authority, and prayed for quashing thereof.

#. Learned counsel Mrs.Vasavdatta Bhatt for Union of India submits that the delinquent employee has not preferred any appeal before the appellate authority and has directly approached the Central Administrative Tribunal, Ahmedabad Bench challenging the order of dismissal dated June 7, 2000. Therefore, the tribunal cannot entertain such application of Shri Raijada unless he exhausts remedies which are available under the Department Rules. She also submits that dismissal order has been passed after conducting the regular departmental inquiry and reasonable opportunity was given to the delinquent employee Shri Raijada. Therefore, she submits that the Tribunal has committed gross error in granting relief in favour of the delinquent employee Shri Raijada. She submitted that a bare perusal of Section 20[1] of the Administrative Tribunal Act provides bar to entertain O.A. unless the departmental remedies have been exhausted by the delinquent employee. However, she fairly admits that it does not provide an absolute bar.

#. In short, submissions made by the learned counsel Mrs.Bhatt that the tribunal has committed gross error in granting relief in favour of the delinquent employee Shri Raijada. However, Smt.Vasavdatta Bhatt, learned counsel for the Union of India, has submitted that the CAT has specifically ordered that the delinquent shall not be entitled to backwages. This finding deserves to be sustained since the delinquent did not work during this period, and principle of "No work no pay" applies, and even otherwise, as per CAT, this period is to be counted towards seniority and increment.

#. As against this, Shri P.H.Pathak, learned counsel for the delinquent-employee, submits that the delinquent has been subjected to inquiry without any justification. He further submits that the punishment order itself is passed by the competent authority on June 7, 2000 is bad, harsh and unjust. Mr.Pathak, learned counsel for the delinquent employee submits that looking to the misconduct charged against Shri Raijada as it is, such punishment itself is disproportionate, harsh and unreasonable. He submits that along with the chargesheet, no name of the witnesses mentioned, based on

whose deposition allegations made against the delinquent employee Shri Raijada, and as such, no name of witnesses were made known to him. It is also contended that the documents referred in the chargesheet were not supplied to the delinquent employee. As such, there is no discussion how the allegations have been proved in the departmental inquiry made by the inquiry officer in his finding. He also submits that in regular departmental inquiry, no witness was examined and merely relying upon the report of the preliminary inquiry, certain questions were put to the delinquent and even without complete inquiry, submitted finding report to the competent authority. It is also submitted that the inquiry officer has submitted a report of the inquiry based on the unilateral finding of the inquiry officer and on that basis, order of dismissal has been passed by the competent authority. It is, therefore, his submission that the inquiry officer has straightaway relied on the investigation report, means, preliminary inquiry report without supplying copy of the said report to the delinquent. However, he submits that the delinquent had made representation against the penalty order to the appellate authority but the appellate authority has not taken care to decide the appeal of the delinquent. Therefore, he submits that the tribunal has rightly appreciated the inquiry proceedings and come to just conclusion that inquiry conducted against the delinquent is contrary to the principle of natural justice and therefore, the tribunal has rightly set aside the dismissal order dated June 7, 2000.

Learned counsel Mr.Pathak, however, submits that the tribunal has committed gross error in not granting the full backwages to the delinquent employee. He also submits that the tribunal has not discussed the said issue at all and as such, no reason, in support of conclusion for denial of backwages, has been given and even that part has not, at all, been discussed but straightaway in one line, denied backwages of three years to the delinquent, which amounts to penalty imposed by the tribunal without the charge being proved against the delinquent. He, therefore, submits that when the inquiry is vitiated as it violates the principle of natural justice and the fact that dismissal is set aside, the delinquent is entitled to normal and natural relief of reinstatement with continuity of service with full backwages of the interim period. He also submits that the Union of India has not pointed out gainful employment of the delinquent and no exceptional circumstance has been pointed out for denial of backwages of the interim period. Therefore, to that extent, according his

submissions, the tribunal has committed gross error which requires to be interfered with by this Court.

In short, submission of learned counsel Mr.Pathak for delinquent employee that the order of penalty is thoroughly inept, illegal, unjust, and arbitrary, as such, rightly quashed and set aside by the CAT. With this conclusion, the delinquent employee should have been granted the backwages of the interim period with all consequential benefits for the period from the date of dismissal till the date of reinstatement.

#. We have given our thoughtful consideration to the contentions raised on behalf of the rival sides. We have perused the order passed by the CAT. It is contention raised by the learned counsel Mrs.Vasvadatta Bhatt that without exhausting the departmental remedies, O.A. should not have been entertained by the Tribunal. It requires to be observed that during the submissions before the CAT, the Union of India raised only objection that since the delinquent-employee had not exhausted alternative remedy by preferring Appeal/ representation before the competent authority, the Original Application could not/ should not be entertained by it. Therefore, the CAT examined this question rested on Section 20(1) of the Administrative Tribunals Act, 1985, which envisages that:

> "A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances." (emphasis supplied)

We have considered Section-20 of the Administrative Tribunal Act. A bare reading of Section shows that it provides bar to entertain O.A. unless departmental remedies have been exhausted by the delinquent employee. However, the word "ordinarily" in sub section [1] of Section 20 does not provide for an absolute bar but it leaves discretion on the Tribunal to entertain O.A., even where the delinquent employee has failed to file an appeal or exhausts the remedies available to him under the relevant Service Rules. It goes without saying that this discretion has to be exercised judicially and cannot be exercised arbitrarily. Even such discretion cannot be exercised in all cases but it has to be exercised in extra ordinary situation. It requires to be appreciated that the tribunal has considered the decision of full bench in case of

B.PARMESHWARA RAO v. THE DIVISIONAL ENGINEER TELECOMMUNICATIONS, ELURA AND ANOTHER reported in 1990 [2] [CAT] SLJ pg.525, wherein it is observed that :

"The emphasis on the word "ordinarily" means that if there be any extraordinary situation or unusual event or circumstance, the Tribunal may exempt the above procedure being complied with and entertain the application. Such instances are likely to be rare and unusual. That is why the expression "ordinarily" has been used."

Thus, the word "Ordinarily" gives discretionary powers to the tribunal and the power is to be exercised only in rare and exceptional cases and not usually or casually. On the basis of above observations, the tribunal has come to the conclusion that the facts of the present case fall within rare and exceptional cases because when the applicant was served with the chargesheet, wherein no name of the witness was stated. Amongst the list of documents by which the article of charge was proposed to be proved were two only, one was DCM's Note dated 10.12.1998 and the other was T.I.Jamnagar's inquiry report dated 12.4.1999. It was based on fact finding inquiry. In the departmental inquiry, no witness was examined. The report of the inquiry officer dated 11.1.2000 was served to the applicant, against which, representation was made and thereafter the order of punishment has been passed. A bare reading of the inquiry officer's report shows that inquiry is based on the statement and cross examination with the relevant record, which includes a report of the T.I. Jamnagar. The statement on which the inquiry officer has based his findings is of ASM on duty Mr.R.P.Yadav, S.B.C.Okha P.S.Saroj and on the statement of the applicant Mr.H.P.Raijada recorded by T.I.Jamnagar. These are all relevant and relate to fact finding inquiry initiated by the T.I., Jamnagar but in regular departmental inquiry, no witnesses were examined and statement of ASM on duty Mr.R.P.Yadav and P.S.Saroj were recorded during fact finding inquiry by T.I.Jamnagar. Therefore, the whole inquiry report of inquiry officer is based on the preliminary report or investigation report of the T.I. Jamnagar. Thereafter, only the delinquent Mr.Raijada was called upon by the inquiry officer and 33 questions were put on the basis of the report of T.I.Jamnagar. He acted as Prosecutor and Judge while conducting the departmental inquiry against the delinquent. Accordingly, statement of the delinquent in a manner of cross examination recorded by the inquiry officer and even prepared the report and submitted the

same to the competent authority. But prior to that, whatever material has been taken into account and relied upon by the inquiry officer, no reasonable opportunity was given to the delinquent to cross examine the witnesses whose statements were recorded during the fact finding inquiry by the T.I. Jamnagar and relied upon by the inquiry officer. It is necessary to note that no such documents including the report of the T.I., Jamnagar has been supplied to the delinquent and no opportunity was given to the delinquent against the material which was collected behind the back of the delinquent and relied upon by the inquiry officer in his report. In other words, the delinquent having no opportunity to cross examine the witnesses and to have material of statements and other relevant record of documents which were produced at the time of fact finding inquiry.

#. The principle is well settled that if any material, documents or statements if obtained behind the back of the delinquent and relied upon by the authority, a reasonable opportunity ought to be given to the delinquent before collecting such material, documents and statements, otherwise, it amounts to violation of basic principles of natural justice. Therefore, the material which has been utilized and relied upon by the inquiry officer which has been obtained behind the back of the delinquent without giving any opportunity to the delinquent, in our opinion, such finding is baseless and perverse and vitiated as it violates basic principle of natural justice. Therefore, in reality, it is not an inquiry worth the name and it violates the principles of natural justice and also statutory service rules and therefore, the conclusion is the inquiry officer's report is not based upon any legal evidence and inquiry has not been conducted as per the Service Rules.

#. At this stage, we consider it just and proper to refer the observations of the Apex Court on the issue what is the real nature of inquiry in case of SUR ENAMEL AND STAMPING WORKS LTD V. THE WORKMEN reported in AIR 1963 SC 1914. The relevant observations made at pg.1916 of the aforesaid decision are reproduced as under :

"4. xxx xxx xxxx xxxx xxx xxx
This attitude is wholly misconceived. An enquiry
cannot be said to have been properly held unless,
(i) the employee proceeded against has been informed clearly of the charges levelled against him,(ii) the witnesses are examined--ordinarily in the presence of the employee-in respect of the

charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justifies in entirely ignoring the conclusion reached by the domestic Tribunal."

Therefore, the inquiry report of the inquiry officer must be reasoned one because it affects the livelihood of the delinquent and it is likely to cast stigma against the delinquent. This aspect has been examined by the Apex Court in case of ANIL KUMAR V. PRESIDING OFFICER AND OTHERS reported in AIR 1985 SC 1121. Important observations made by the Apex Court in para-5 & 6 of the aforesaid decision are referred below:

"5. We have extracted the charge framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi enquiry held according to the principles of natural justice and Enquiry Officer ha a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the

evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. v. Union of India [1966] 1 SCR 466 : [AIR 1966 SC 671],this Court observed that a specking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad v. State of Uttar Pradesh [1971] 1 SCR 201 : [AIR 1970 SC 1302], this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non application of mind and it is such an enquiry which ha found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non application of mind would be unsustainable."

##. On the facts of the case, the CAT comes to the conclusion that it can entertain the application,

therefore, proceeds to examine it on merits. After coming to this conclusion, it recorded that the inquiry was completely sham. It was based on Office Note and fact finding report. It was not conducted in accordance with law . The delinquent was put certain questions during the inquiry and conclusions drawn for recording the report. This way, opportunity of hearing was not given to the delinquent-employee, therefore, the CAT thought the necessity of dealing with the matter straightway instead of directing the applicant to have recourse to remedy before the appellate authority. Therefore, in our opinion, the tribunal has rightly come to the conclusion that the departmental inquiry is vitiated and the finding is baseless and perverse as it violates the principles of natural justice and also, the statutory rules. For that, the tribunal has not committed any error. However, it is made clear that before the Tribunal, the Union of India has not raised any contention as regards the legality of the departmental inquiry and finding, but only contention was raised as to maintainability of the O.A. filed by the delinquent. This aspect has been made clear by the Tribunal in para-13 that the learned counsel for the respondent has not addressed the Bench on the aforesaid question and limited arguments only to the question that the tribunal has no jurisdiction because of not filing of the appeal by the applicant. But the tribunal has examined the merits after entertaining the original application filed by the applicant. Similarly, even before us also, the learned counsel for the Union of India has not raised specific contention about the order or finding of the tribunal in respect of the inquiry is bad. No such submissions are made by the learned counsel Mrs.Bhatt, therefore also, there is no need to deal with such contention.

##. More over, we need not deal with the merits of this conclusion since the Union of India has implemented the judgment of the CAT by reinstating Shri H.P.Raijada. The objection of the Union of India raised vehemently before us is relatable to the demand of delinquent for payment of salary from the date of dismissal to the date of reinstatement raised in the petition by the delinquent.

##. We are now examining the contentions raised the learned counsel Mr.Pathak on the issue of denial of full backwages of the interim period by the Tribunal. We have perused the observations made by the CAT in para-14, wherein the tribunal has directed that the applicant is not entitled to backwages. There is no doubt that the

tribunal has not given any discussion on the issue and as such, no reason has been given by the tribunal that why the applicant is not entitled to any backwages of the interim period. In brief, there is no finding at all in the order that why back wages are denied to the applicant. In other words, the direction for denial of backwages is based on unreasoned order. It is settled law laid down by the Apex Court in catena of decisions that once the inquiry is vitiated and finding of the inquiry officer is held to be invalid, then, the delinquent is entitled the natural and normal relief of reinstatement with continuity of service with full backwages of the interim period, unless the employer proves gainful employment of the delinquent or to point out exceptional circumstances to deny the backwages of the interim period. From a bare perusal of the order, it transpires that the Union of India has not alleged against the delinquent that the delinquent was gainfully employed during the interim period, nor the Union of India has pointed out any exceptional circumstances to deny backwages of the interim period. The delinquent was not allowed to work because of the dismissal order dated June 7, 2000 which has been held to be illegal and set aside. Therefore, there is no doubt that the delinquent was prepared to work but not allowed to work by the Union of India and hence, no fault can be found on the part of the delinquent for not to work during this interim period. If backwages is not directed in favour of the delinquent, then, it amounts to premium to an employer who passed an illegal order and a result thereto, the delinquent remained out of job for a period of three years. What happened with the delinquent during these three years period, how he maintained his family without job and income, what might have happened with his children when the delinquent remained out of job during these three years period. All these aspects ought to have been taken into consideration by the tribunal while denying the backwages. It is very difficult to maintain the family without any income or job. The delinquent employee must have undergone this agony with stigma of dismissal in the society. When an employee dismissed from the service, even close neighbour or relatives are not extending support to such dismissed employee but on the contrary, all keep themselves away from such dismissed employee. Even no loan is available from any Government Financial Institution to such dismissed employee. This situation might have been faced and undergone by the delinquent for no fault of him for a period of three years. What actually has been damaged to the family of the delinquent for a period of three years, we are not aware of it but we can certainly visualise

certain hard realities of a life when such an employee has to maintain his family without any job and income. Therefore, all these aspect require to be borne in mind by the tribunal while denying the total backwages of the interim period by one line order without application of mind. This aspect has been considered by the Apex Court in case of M/S HINDUSTAN TIN WORKS PVT. LTD V. THE EMPLOYEES OF M/S HINDUSTAN TIN WORKS PVT. LTD AND ORS [AIR 1979 SC 75]. The Apex Court in para-9 of the aforesaid decision, in para-9, said :

"9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness.

> That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safari Kamdar Mandal, (1971) 1 Lab LJ 508 and a Division Bench of the Allahabad High Court in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow, (1971) 1 Lab LJ 327 have taken this view and we are of the opinion that the view taken therein is correct."

##. With this background, it is no more res-integra that the delinquent-employee is entitled to salary for the period claimed (See also Union of India v. Madhusudan Prasad [2004 SCC (L&S) 29]). In this case also, the delinquent-employee could not work since he was dismissed from service in an inquiry which has been quashed. The

relevant observations in para-6 of the above decision, squarely applicable to the facts of this case, referred as under :

"6. The above case was concerning an employee, who was found guilty in an enquiry but the report was not furnished to the employee and the show cause notice was not served on him. In view of the facts and circumstances of the case, the Court directed that appropriate order should be passed regarding the backwages. In the instant case, the Appellate Authority directed reinstatement of the respondent and held that he was not entitled to get back wages for the period he was out of service. It may be noticed that the respondent was removed from service without any enquiry and he was not even given a show cause notice prior to his dismissal from service. There was fault on the part of the employer in not following the principle of natural justice. These relevant facts were considered and the learned Single Judge and also the Division Bench ordered the payment of backwages. We do not think this is a fit case where Fundamental Rule 54 could have been invoked by the authorities. We find no merit in the appeal. The appeal is accordingly dismissed."

##. Therefore, blame for not working does not lie on the delinquent-employee in the facts of this case. As such, he cannot be denied backwages on the ground that he did not work for this period. It is obvious that the delinquent was not permitted by the employer to work because of the dismissal order dated June 7, 2000, therefore, there is no fault on the part of the delinquent for not working in the interim period. But it was an erroneous order and / or decision of the employer not to allow the delinquent to work and therefore, the principle of "No work no pay" cannot be applied in a straightjacket formula but it depends upon facts of each case. It is also not the case of the employer that though offer of work was made to the delinquent but the offer was refused by the delinquent. Therefore, we come to the conclusion that the delinquent-employee has been prevented from service by the competent authority and there is no evidence suggesting that he declined to work at any point of time.

##. Therefore, considering the entire facts and circumstances of the case, we are of the considered

opinion that the tribunal has rightly set aside the dismissal order with no liberty to reopen the case of the delinquent and granted reinstatement with continuity of service. But the tribunal has committed an error in denying the full backwages of the interim period to the delinquent and therefore, the direction for denial of full backwages requires to be quashed and set aside. We come to the conclusion and hold that the delinquent employee Shri Hasmukhbhai P. Raijada is entitled to full backwages for the interim period from the date of dismissal i.e. June 7, 2000 till the date of reinstatement with all consequential benefits as if the dismissal order dated June 7, 2000 has never been passed against the delinquent.

##. Consequently, Special Civil Application No.16201 of 2003 (Hasmukhbhai P.Raijada v. Union of India) is allowed. The competent authority is directed to pay Shri Hasmukhbhai P.Raijada, full wages with all consequential benefits as per the Service Rules for the period from the date of dismissal to the date of his reinstatement as if Shri H.P.Raijada deemed to be in service during the interim period.

Rule is made absolute to the above extent.

Accordingly, Special Civil Application No.15585 of 2003 (Union of India v. Hasmukhbhai P.Raijada) is dismissed and therefore, Rule is discharged.

No order as to costs.

[BHAWANI SINGH]

CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

(sunil)